



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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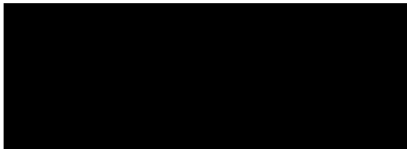
FILE: [REDACTED] Office: Manila

Date: MAR 10 2000

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under §  
212(g) of the Immigration and Nationality Act, 8 U.S.C. 1182(g)

IN BEHALF OF APPLICANT:



Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

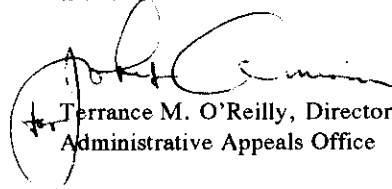
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting Officer in Charge, Manila, Philippines, and is now before the Associate Commissioner for Examinations on appeal. His decision will be withdrawn, and the matter will be remanded to him for further consideration and action.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States by a consular officer under § 212(a)(1)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(1)(A)(ii)(I), amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and redesignated as § 212(a)(1)(A)(iii) of the Act, 8 U.S.C. 1182(a)(1)(A)(iii), as an alien having a Class A medical condition, mild mental retardation. The applicant is the unmarried daughter of a lawful permanent resident and the beneficiary of an approved family sponsored preference visa petition. The applicant seeks the above waiver under § 212(g) of the Act, 8 U.S.C. 1182(g), in order to join her family in the United States.

The acting officer in charge denied the application for failure of the applicant to proceed to Saint Luke's Extension Clinic for medical (psychological) reevaluation.

On appeal, the applicant's mother submits an affidavit of support, evidence of her November 1996 marriage to [REDACTED] a naturalized U.S. citizen, and numerous financial documents. None of the documentation relates to the reason for the denial of the application.

Section 212(a)(1)(A)(iii) of the Act states that any alien who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General) -

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior, is inadmissible.

Section 212(g)(3) of the Act provides that:

The Attorney General may waive the application of subsection (a)(1)(A)(iii) in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in her discretion after consultation with the

Secretary of Health and Human Services, may by regulation prescribe.

8 C.F.R. 212.7(b) contains the regulations regarding an alien with certain mental conditions who is eligible for an immigrant visa but requires the approval of a waiver of grounds of inadmissibility. The regulations stipulate that the applicant or sponsoring family member shall submit a waiver application and a statement to the appropriate consular or Service office indicating that arrangements have been made to provide the alien's complete medical history, including details of any hospitalization or institutional care or treatment for any physical or mental condition; findings as to the alien's current physical condition, including reports of chest X-ray examination and of serologic test for syphilis, and other pertinent diagnostic tests, and findings as to the alien's current mental condition, with information as to prognosis and life expectancy and with a report of a psychiatric examination conducted by a psychiatrist who shall, in case of mental retardation, also provide an evaluation of the alien's intelligence. For an alien with a past history of mental illness, the medical report shall also contain available information on which the U.S. Public Health Service can base a finding as to whether the alien has been free of such mental illness for a period of time sufficient in the light of such history to demonstrate recovery. The medical report is then forwarded to the U.S. Public Health Service for review.

The record reflects that the acting officer in charge referred to a September 6, 1995, diagnosis of the applicant in which she was determined to have mild mental retardation with an impulsive disorder.

The record contains Optional Form 157, dated February 6, 1995, reflecting that the applicant was given a physical and mental examination at [REDACTED] by the staff. The record also contains a psychological report by Dr. [REDACTED] dated February 21, 1995, in which she determined that the applicant was mentally retarded, mild type, and may harm people when she gets provoked. The Center for Disease Control evaluation dated September 6, 1995, confirmed Dr. [REDACTED] diagnosis, classified the applicant as Class A under a former ground of inadmissibility and indicated that she will need psychiatric care if a waiver is granted.

The acting officer in charge states that the Service requested on April 27, 1998, that the applicant proceed to Saint Luke's Extension Clinic for re-evaluation which she failed to do. That evidence is not contained in the record.

The record contains Optional Form 157, dated April 28, 1998, reflecting that the applicant was given a physical and mental examination at [REDACTED] by the staff. The record also contains a psychological report by Dr. [REDACTED] dated May 15, 1998, in which she determined in her re-evaluation that the applicant was mentally retarded, mild type, and may harm

people when she gets provoked. The applicant's examination was finalized on June 1, 1998, and contains the notation that it supersedes the previous final report dated March 2, 1995.

The record also contain evidence that Parts II and III of Form CDC 4.422-1 for the applicant have been signed and returned to the Center for Disease Control and evidence that the applicant will be taken to the San Andreas Regional Center within 30 days of her arrival in the United States for evaluation.

Although it appears that the applicant in this matter has complied with the outstanding regulations regarding her present condition and follow-up procedures, the Associate Commissioner may not have full understanding of the reason for denial of the application. Therefore, the officer in charge's decision will be withdrawn, and the matter will be remanded to him for review and the rendering of a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner for review. Accordingly, the officer in charge's decision will be withdrawn.

**ORDER:** The officer in charge's decision is withdrawn. The matter is remanded to him for further action consistent with the foregoing discussion and entry of a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner for review.